BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 92-13
Tariff Filing Requirements for Interstate Common Carriers	)	

COMMENTS OF FIRST FINANCIAL MANAGEMENT CORPORATION

FIRST FINANCIAL MANAGEMENT
CORPORATION

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March 30, 1992

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SUMMARY

First Financial Management Corporation strongly supports the Commission's permissive forbearance policy. Sections 4(i), 203(b)(2), and 203(c) of the Communications Act of 1934 authorize the Commission to modify the tariff filing requirement for non-dominant carriers so that the Commission can permit such non-dominant carriers to provide service without filing tariffs. Similarly, Sections 203(c) and 211 permit carriers to provide service by contract rather than by tariff and to forbear from requiring carriers to file the contracts. Permissive forbearance serves the public interest by promoting competitive rates and services within the interexchange market for business services. The doctrine also provides both carriers and customers with the flexibility they need to structure unique packages of services at cost efficient rates. The Supreme Court's Maislin decision has no direct relevance to this proceeding because there the Court did not decide the issue of whether carriers must always file tariffs to provide service. In contrast, Congress recently confirmed the lawfulness of the permissive forbearance doctrine by enacting the Telephone Operator Consumer Services Improvement Act of 1990. In fact, Congress based a provision of that Act upon the doctrine's continued existence.

The Commission can -- and certainly should -- maintain its long-standing permissive forbearance doctrine. If, however, the Commission concludes that its permissive forbearance policy

is unlawful, then it should only apply tariff filing procedures to common carriage contracts, not to individually negotiated, custom tailored private carriage contracts. Since non-dominant carriers have no market power to set unlawfully discriminatory rates, the Commission should streamline applicable common carriage tariff filing procedures to conserve Commission resources and minimize the anticompetitive impact of the requirement. Finally, the Commission should require carriers to continue providing contract-based services by filing tariffs containing brief contract summaries.

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First Financial Management Corporation ("FFMC"), by its attorneys, hereby submits its comments on the Notice of Proposed Rule Making in the above-captioned proceeding. [1/]

I. INTRODUCTION

1. FFMC is an information services provider headquartered in Atlanta, Georgia. The services offered by FFMC and its subsidiaries include merchant credit card authorization; debt collection and accounts receivable management; data imaging, micrographics, and electronic data base management; financial institutions processing; health claims processing; and development and marketing of information systems. FFMC also owns the largest savings institution in Georgia and a major regional consumer finance company. FFMC's revenues for 1991 were more than $1 billion.

2. Telecommunications services are a key component of FFMC's information services, providing a vital link between its

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[1/] Tariff Filing Requirements for Interstate Common Carriers, Notice of Proposed Rulemaking, 7 FCC Rcd 804 (1992) ("Notice").

customers and its computer networks. FFMC spends approximately $30 million per year on these services. Because of the unique nature and high volume of FFMC's telecommunications needs, no tariff or combination of tariffs currently on file at the Commission meets FFMC's needs in a cost effective manner. Only a contractual arrangement offers FFMC the customized package of services and flexibility it needs to compete effectively in the information services industry and to continue to offer new and innovative services to its customers on a timely basis.

3. Given the Commission's long-standing "permissive forbearance" doctrine, FFMC entered into a long-term contract with an interexchange carrier ("IXC") for a uniquely tailored and integrated package of telecommunications services. FFMC purchased customer premises equipment ("CPE"), modified its network design, and structured its own customer relationships in reliance on the long-term validity of the IXC contract. Should the Commission take any action which results in fundamental change to this contractual relationship, FFMC, and thousands of similarly situated customers across the nation, would suffer substantial economic and competitive hardships. Moreover, such hardships would be completely unnecessary because the permissive forbearance policy is lawful.

4. As discussed below, the Commission should retain the permissive forbearance doctrine because it is authorized by the Communications Act of 1934 -- as recently affirmed by Congress -- and because the policy serves the public interest. Nevertheless,

should the Commission decide that permissive forbearance is unlawful, then IXCs should be required to file new tariffs that preserve the rates and other terms and conditions in those service arrangements currently provided under contract.

II. THE FCC HAS THE AUTHORITY UNDER THE COMMUNICATIONS ACT TO ESTABLISH A PERMISSIVE FORBEARANCE POLICY

5. The Communications Act of 1934, as amended, authorizes the Commission to forbear from requiring non-dominant common carriers to file tariffs as prescribed by Section 203(a). [2/] This authority stems from both Titles I and II of the Act.

6. Section 203(b)(2) permits the Commission "in its discretion and for good cause shown, [to] modify any requirement made by or under the authority of this section either in particular instances or by general order applicable to special circumstances or conditions. . . ." [3/] In essence, this subsection allows the Commission to modify the requirements of

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[2/] 47 U.S.C. § 203(a) (1988).

[3/] Id. § 203(b)(2). Although the D.C. and Second Circuits have interpreted this subsection somewhat narrowly, there are at least two important reasons why such a construction should not be applied in this proceeding. See MCI Telecommunications Corp. v. FCC, 765 F.2d 1186, 1191-93 (D.C. Cir. 1985); American Telephone & Telegraph Co. v. FCC, 487 F.2d 865 (2d Cir. 1973). First, the context of both decisions was substantially different from this proceeding. In each of those other cases the Commission attempted to prohibit carriers from filing tariffs. In fact, while striking down the FCC's mandatory forbearance policy, the D.C. Circuit expressly declined to extend its interpretation of Section 203 to the permissive forbearance context. MCI Telecommunications Corp., 765 F.2d at 1196. Second, Congress has subsequently approved the permissive forbearance policy when it enacted the Telephone Operator Customer Services Improvement Act of 1990 ("Operator Services Act"). See infra Section IV for a discussion of this legislation.

Section 203(a) as long as it does so "for good cause." As discussed below, there are ample "good cause" reasons for the Commission to continue its long-standing forbearance policy.

7. Customers of IXCs benefit from forbearance because the policy allows them to tailor their telecommunications services to their particular needs. For large customers, contract negotiation is the most efficient means to obtain a unique package of services at competitive rates. It also provides carriers with the flexibility to respond quickly to customer demands for new services or terms. Moreover, because non-dominant carriers cannot exercise market power, they cannot force unjust or unreasonable rates on customers or others in the market. Given the many important benefits and the lack of costs associated with permissive forbearance, good cause under Section 203(b) exists for the doctrine.

8. In addition, Section 203(c) supports the Commission's authority to modify its tariff filing requirements. Section 203(c) states that "unless otherwise provided by or under authority of this Act," no carrier can provide communications unless tariffs have been filed and published with the FCC. [4/] The very existence of this clause demonstrates the Commission's authority to modify the tariff filing requirements. If the FCC were prohibited by statute from permitting carriers to provide service without first filing a tariff, then this clause in Section 203(c) would be meaningless. Moreover, by including the

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[4/] 47 U.S.C. § 203(c) (emphasis added).

words "or under authority of this Act" in the clause, Congress expressly contemplated that other provisions of the Communications Act authorize the Commission to forbear from requiring all carriers to file tariffs. The Commission should assume that Congress meant what it said, i.e., carriers can provide services without filing tariffs if "otherwise provided by" the Communications Act or "under authority" of the Communications Act.

9. Not only does Section 203(b)(2) provide for the Commission to establish its permissive forbearance policy, but that policy is also authorized by Section 4(i). That section gives the Commission the authority to "perform any and all, acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." [5/] Given the language of Section 203(c), which permits exceptions to the tariff filing requirement, Section 4(i) authorizes the Commission to have a permissive forbearance policy because it is not "inconsistent" with the Act.

10. In addition, Section 211 authorizes the Commission "to require the filing of any other contracts of any carrier, and . . . to exempt any carrier from submitting copies of such minor contracts as the Commission may determine." [6/] Read in conjunction with the "unless otherwise provided by" language of Section 203(c), Section 211 -- by its terms -- contemplates that

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[5/] Id. § 4(i).

[6/] Id. § 211(b).

carriers can provide service by contract rather than by tariff. Moreover, Section 211 gives the Commission the discretion to forbear from requiring carriers to file these contracts. Thus, Section 211 provides an alternate justification for the permissive forbearance doctrine.

11. Furthermore, the courts have recognized that the Commission has broad authority to determine the proper means of regulating the areas under its jurisdiction. The Supreme Court has recognized that Congress gave the Commission "'a comprehensive mandate'" with "'expansive powers.'" [7/] Due to the "highly complex and rapidly expanding nature of communications technology," the FCC has been given substantial discretion to determine "both what and how it can properly regulate." [8/] This authority includes the discretion to decline to exercise certain statutory powers [9/] -- presumably including the power to require non-dominant common carriers to file tariffs.

[7/] United States v. Southwestern Cable Co., 392 U.S. 157, 173 (1968) (quoting National Broadcasting Co., Inc. v. United States, 319 U.S. 190, 219 (1943)).

[8/] NARUC v. FCC, 525 F.2d 630, 638 n.37 (D.C. Cir.), cert. denied, 425 U.S. 992 (1976) ("NARUC I").

[9/] NARUC v. FCC, 533 F.2d 601, 620 n.113 (D.C. Cir. 1976) ("NARUC II") (citing Philadelphia Television Broadcasting Co. v. FCC, 359 F.2d 282, 284 (D.C. Cir. 1966)).

III. THE SUPREME COURT'S MAISLIN DECISION DOES NOT UNDERMINE THE VALIDITY OF THE FCC'S PERMISSIVE FORBEARANCE DOCTRINE

12. The Commission cites a recent Supreme Court decision, Maislin Industries, U.S., Inc. v. Primary Steel, Inc., [10/] as a reason for initiating this proceeding. [11/] There are at least three reasons why Maislin is not relevant to determining whether the Commission's permissive forbearance policy is lawful.

First, the "filed rate doctrine" of Maislin does not conflict with the FCC's permissive forbearance policy. In Maislin, the Court struck down the Interstate Commerce Commission's ("ICC's") policy prohibiting carriers that had secretly negotiated rates lower than their filed tariff rates from later being able to collect those filed rates. Maislin stands for the proposition that as long as carriers are required to file tariffs, they cannot charge customers rates for the same service that are at variance from the filed rates. In that case, the Court assumed that the Interstate Commerce Act required common carriers to file tariffs. In this proceeding, however, this assumption is the fundamental issue. Since Maislin did not address the issue of whether carriers must always file tariffs to provide service, it cannot properly be viewed as determining the lawfulness of the FCC's forbearance policy.

13. Second, the Interstate Commerce Act contains no counterpart to Section 203(c) that would permit the ICC to

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[10/] 110 S. Ct. 2759 (1990).

[11/] Notice, 7 FCC Rcd at 805.

deviate from the filed rate requirement for motor common carriers. [12/] For this reason, Maislin's holding that the ICC cannot modify or eliminate its statutory "filed rate" requirement does not govern the FCC's authority to modify its tariff requirements pursuant to the Communications Act.

14. Finally, the Court stated that there was no specific statutory provision or legislative history that justified overturning the well-established statutory "filed rate" requirement. [13/] In contrast, both the text and the legislative history of the Operator Services Act support the validity of the permissive forbearance doctrine. [14/]

IV. ENACTMENT OF THE OPERATOR SERVICES ACT CONFIRMS CONGRESS' APPROVAL OF THE PERMISSIVE FORBEARANCE DOCTRINE

15. The permissive forbearance policy has been the cornerstone of the FCC's competitive carrier policy since 1982. [15/] The FCC first applied the policy to non-dominant

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[12/] Under Section 10761(b) of the Interstate Commerce Act, the ICC may grant relief from the filed rate requirement only to contract carriers -- not common carriers -- and only if certain specific conditions are met. 49 U.S.C. § 10761(b) (1988).

[13/] Maislin, 110 S. Ct. at 2770.

[14/] See infra Section IV.

[15/] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Therefor, Second Report and Order, 91 FCC 2d 59 (1982), recon. denied, 93 FCC 2d 54 (1983); Second Further Notice of Proposed Rule Making, 47 Fed. Reg. 17,308 (1982); Third Further Notice of Proposed Rule Making, 48 Fed. Reg. 28,282 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983); Fourth Further Notice of Proposed Rule Making, 49 Fed. Reg. 11,856 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984); Sixth Report and Order, 99 FCC 2d 1020 (1985), rev'd and remanded
(continued...)

common carriers such as MCI one year later. [16] All subsequent Commission regulation of IXCs has been premised upon this policy. In view of this consistent course of administrative action and Congress' failure to modify it, Congress is deemed to have provided "implicit approval for such Commission interpretations." [17] Not only has Congress implicitly approved the policy by its long silence, but its passage of the Operator Services Act in 1990 makes explicit this prior approval.

16. Both the language and the legislative history of the Operator Services Act [18] demonstrate that Congress was aware of the Commission's permissive forbearance doctrine when it passed that statute and that it affirmatively approved of the doctrine. For example, Section 226(h)(1) requires all operator service providers ("OSPs") to file "an informational tariff specifying rates, terms, and conditions . . . with respect to calls for which operator services are provided." [19] After four years,

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[15] (...continued)
sub nom. MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985) ("Competitive Common Carrier").

[16] Competitive Common Carrier, Fourth Report and Order, 95 FCC 2d 554 (1983) (subsequent history omitted).

[17] Office of Communication of the United Church of Christ v. FCC, 707 F.2d 1413, 1429 n.50 (D.C. Cir. 1983). See also Haig v. Agee, 453 U.S. 280, 300 (1981); Zemel v. Rusk, 381 U.S. 1, 11-12 (1965).

[18] 47 U.S.C.A. § 226 (West 1991).

[19] Id. § 226(h)(1)(A). The tariffs are "informational" in the sense that, unlike tariffs filed pursuant to Section 203 of the Communications Act, informational tariffs are not subject to pre-effectiveness review and suspension by the Commission.

the Commission may waive this filing requirement for these common carriers if it finds that certain specified regulatory objectives have been met. [20/] This statutory scheme reflects Congress' view that prior to passage of the Operator Services Act no tariffs were required to be filed by these non-dominant common carriers.

17. In fact, if the permissive forbearance doctrine were not in effect and lawful, Section 226(h)(1) would be superfluous because OSPs would already have been required to file tariffs under Section 203. Moreover, the four-year sunset provision of the informational tariff filing requirement for OSPs would be irrational unless Congress believed when it enacted the Operator Services Act that the Commission's permissive forbearance policy was lawful. The language of the Operator Services Act and its legislative history clearly show that Congress sought to increase, rather than decrease, regulation of the OSP industry. Yet without the Commission's permissive forbearance policy, the statute would have precisely the opposite effect: OSPs that would otherwise be required to file Section 203 tariffs would be permitted to file the less burdensome informational tariffs. Such an irrational result was certainly not intended by Congress and demonstrates that Congress drafted the Operator Services Act

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[20/] Id. § 226(h)(1)(B).

to coexist with, not alter, the permissive forbearance doctrine. [21/]

18. The legislative history of the Operator Services Act reinforces the conclusion that Congress understood the permissive forbearance policy and chose not to disturb the regulatory distinction between dominant and non-dominant common carriers. Both the Senate and House Reports state that the Act was not intended to affect the separate filing requirements that apply to dominant carriers, and both contemplated that OSPs should have less burdensome tariffing requirements then dominant carriers. [22/] The Senate Report discusses the history of the forbearance policy [23/] and then states that informational tariffs would not be expected to contain the same detailed cost justification materials as required for tariffs filed pursuant to Section 203. [24/] The House Report recognized with apparent approval the FCC's "long-standing policy of regulating only those companies with market power." [25/] As does the language of the Operator Services Act, these Congressional reports plainly

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[21/] Indeed, if Congress had any uncertainty about the validity of the Commission's permissive forbearance doctrine, then it would have included a forbearance provision in the waiver section just as it did in the Record Carrier Competition Act of 1981. See 47 U.S.C. § 222(b)(1) (1988).

[22/] S. Rep. No. 439, 101st Cong., 2d Sess. 9, 23 (1990) ("Senate Report"); H.R. Rep. No. 213, 101st Cong., 1st Sess. 14 (1989) ("House Report").

[23/] Senate Report at 3 n.10.

[24/] Id. at 9, 23.

[25/] House Report at 6.

recognize and affirm the validity of the FCC's forbearance policy as applied to non-dominant carriers.

V. CUSTOMIZED, INDIVIDUALLY NEGOTIATED CONTRACTS ARE PRIVATE CARRIAGE ARRANGEMENTS THAT ARE NOT SUBJECT TO TARIFF FILING REQUIREMENTS

19. Even if the Commission should find that the permissive forbearance policy is unlawful, carriers should not be required to file those off-tariff service arrangements that are properly classified as private carriage services. In NARUC I, the D.C. Circuit stated that a service provider "will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal." [26/] Other factors that the court has recognized as reflecting private rather than common carriage arrangements are the medium-to-long term nature of contractual relationships, the relative stability of the carrier's client base, and the highly individualized methods of operation of the services. [27/] Many contracts between non-dominant carriers and large customers have these characteristics and therefore can be properly classified as private carriage arrangements -- especially since they are the result of highly individualized negotiations, involve long-term relationships, and consist of unique packages of services that have been custom tailored to particular customers' needs. Because Title II requirements do not apply to private carriage contracts, non-dominant carriers should not be required to file

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[26/] NARUC I, 525 F.2d at 641.

[27/] Id. at 643.

tariffs regarding these types of special, "private carriage" contracts.

VI. IF PERMISSIVE FORBEARANCE IS FOUND TO BE UNLAWFUL, THEN STREAMLINED FILING PROCEDURES SHOULD BE APPLIED TO NON-DOMINANT CARRIERS

20. FFMC believes that the Commission acted lawfully in adopting the permissive forbearance policy. Nevertheless, if this proceeding results in the invalidation of the policy, then the Commission should adopt rules to ensure that non-dominant carriers can file tariffs for common carriage services under the most streamlined procedures. As a starting point, the Commission should permit carriers to file contract-based tariffs that summarize the material terms of their existing off-tariff contracts. As the Commission recently decided in the Competition in the Interstate Interexchange Marketplace proceeding, Section 203 of the Communications Act gives the Commission the authority to adopt such a policy. [28/]

21. The Commission should recognize, however, that because non-dominant carriers do not have the market power of AT&T, they cannot charge rates or engage in discriminatory pricing practices that violate the Communications Act. [29/] Thus, the same contract carriage rules currently applicable to AT&T should not be imposed on non-dominant carriers. Instead, the requirements

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[28/] Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd 5880, 5902 (1991), modified, Order, 6 FCC Rcd 7255 (Com. Car. Bur. 1991) ("Interexchange Order").

[29/] See Competitive Common Carrier, Second Report and Order, 91 FCC 2d at 69 (subsequent history omitted).

should be relaxed so that non-dominant carriers can file tariffs with one day's notice and without supporting cost justification. The actual procedures for filing the contract-based tariffs should be similar to those followed by OSPs in filing informational tariffs. [30/] This streamlined approach would serve the public interest because the less burdensome restrictions will conserve Commission and carrier resources and minimize the anticompetitive effects of the tariff filing requirement. Moreover, by requiring the filing of contract-based tariffs rather than the contracts themselves, customers can negotiate for new services without fear that the network design and other proprietary information contained in those service contracts will become available for review by their competitors -- a result that would be anticompetitive and would inhibit innovation.

VII. IF PERMISSIVE FORBEARANCE IS UNLAWFUL, THEN CARRIERS SHOULD BE REQUIRED TO FILE TARIFFS TO PRESERVE EXISTING CONTRACTUAL ARRANGEMENTS

22. If the Commission concludes that its permissive forbearance policy is unlawful, then the affected carriers should be required to file with the Commission new tariffs that preserve the rates and other terms and conditions specified in all current common carriage service contracts. [31/] By taking this action,

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[30/] See Public Notice on Procedures for Filing Informational Tariffs, DA 90-1773 (released December 4, 1990).

[31/] An exception to this policy could be if the existing contract contained a self-terminating provision that becomes effective if the Commission's forbearance policy is invalidated.

the Commission will minimize disruption to important economic relationships that have been established between carriers and their customers that rely on the FCC's policies. In contrast, if these economic relationships were disrupted, then there could be significant and unnecessary harm to many companies throughout the country at a time when the country is struggling to recover from difficult economic times. Such a result would not be in the public interest.

A. Current Off-Tariff Arrangements Should Be Protected As Were Existing Tariff 12 Options

23. The same basic principles which persuaded the Commission to permit the grandfathering of Tariff 12 contracts in the Interexchange Order [32/] apply here. In that proceeding, the Commission precluded AT&T from bundling 800 or any inbound service in its new Tariff 12 options, but found that the public interest would be served by grandfathering all Tariff 12 options already in effect, rather than invalidating them. [33/] The Commission permitted grandfathering for three reasons: because competition in the marketplace would not be significantly affected; because the reason for prohibiting the bundling (i.e., AT&T's ability to leverage its market power into the 800 services market through the use of Tariff 12 offerings) would be

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[32/] 6 FCC Rcd 5880 (1991).

[33/] Id. at 5906 and n.236.

eliminated within eighteen months; and because of the reliance interests of existing Tariff 12 customers. [34/]

24. The Commission's three justifications for grandfathering of Tariff 12 options apply with equal, if not greater, force to existing contracts with non-dominant IXCs. First, requiring non-dominant carriers to file tariffs briefly summarizing these contractual arrangements will increase competition in the interexchange market as customers would be able to continue to receive the benefits of their negotiations. By contrast, not requiring carriers to file tariffs would allow carriers to abrogate these favorable arrangements, thereby reducing competition. Second, unlike AT&T, the non-dominant carriers covered by the Notice have no market power over 800 services or any other type of communications service. Accordingly, there would be no harm to the public by grandfathering existing arrangements while there would be substantial and important benefits for taking such action.

25. Third, contract carriage customers should not be compelled to suffer hardships from forced disruption of service and destruction of their long-term contract-based expectations. As a result, for the reasons relied upon by the Commission to protect customers having Tariff 12 options that include 800 services, the Commission should also protect contract carriage customers. Customers which have negotiated off-tariff arrangements have expended substantial time and resources similar

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[34/] Id. at 5906.

to those companies that negotiated Tariff 12 options, and therefore those customers have reliance interests deserving of similar protection.

B. The Commission Has a Long-Standing Policy to Protect Customers' Investments in Telephone Equipment and Service Contracts

26. The Interexchange Order is but one recent example of the Commission's protection of long-term investment interests of common carrier customers. For example, long before the permissive forbearance doctrine, when the Commission began its program of requiring CPE to be registered, the Commission exempted from registration equipment that was already connected to the public switched network. [35/] As additional types of equipment were required to be registered, existing equipment was grandfathered. [36/]

27. The contract carriage customers of IXCs have made similar investments that should be protected through grandfathering. Customers such as FFMC have selected certain types of CPE over others and have purchased certain types of sophisticated equipment in order to take advantage of customized services provided under contract. If carriers were to discontinue providing service at previously negotiated rates because the Commission decides not to require non-dominant

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[35/] Interstate and Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Service (WATS), First Report and Order, 56 FCC 2d 593, 613 n.36 (1975), Memorandum Opinion and Order, 57 FCC 2d 1216, 1219-20 (1976) (subsequent history omitted).

[36/] See 47 C.F.R. § 68.2(c)-(h) (1991).

carriers to file tariffs regarding existing deals, those customers would lose their substantial investments in equipment and network design. By contrast, requiring non-dominant carriers to tariff existing contracts will ensure that customers can continue to make full use of their equipment and networks.

28. Similarly, the Commission has traditionally protected customers from carriers that attempt to change unilaterally long term contracts. For example, the Commission has long recognized that "a carrier's proposal to modify extensively a long term service tariff may present significant issues of reasonableness under Section 201(b) of the Act which are not ordinarily raised in other tariff filings." [37/] Of particular importance to this proceeding, the Commission has stated that the right of a carrier to change its tariff unilaterally should be viewed differently when the tariff represents a quasicontractual agreement between the parties. [38/]

29. Many affected customers have negotiated specific contractual agreements with carriers and their interest in being protected from unilateral change by those carriers is even stronger than in a long-term tariff situation and even more deserving of Commission protection. Carriers were free to negotiate for contract provisions that would terminate those special deals if the Commission were to modify substantially or

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37/ RCA American Communications, Inc., 84 FCC 2d 353, 358 (1980) (subsequent history omitted).

38/ Id.

eliminate its permissive forbearance policy. Those non-dominant carriers that failed to include such explicit provisions in their agreements should not be granted such rights by the Commission -- especially since customers have relied upon the validity of those arrangements.

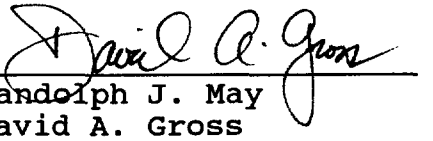
VIII. CONCLUSION

30. For the above reasons, the Commission's permissive forbearance policy is both lawful and in the public interest. The Communications Act gives the Commission the discretion to modify the tariff filing requirement for non-dominant carriers. Furthermore, Congress recently approved of the doctrine and even based a provision of the Operator Services Act upon its continued existence. Moreover, the policy serves the public interest by promoting competitiveness for rates and services within the IXC market for business services. Permissive forbearance provides both carriers and customers with the flexibility they need to structure unique packages of services. Thus, the Commission should maintain its long-standing permissive forbearance doctrine. If, however, the Commission concludes that its permissive forbearance policy is unlawful, then it should streamline tariff filing procedures and require existing contracts to be preserved in contract-based tariffs in order to minimize the harm to the customers' long-term investment interests. Finally, these streamlined procedures should only be

applied to common carriage contracts, not to individually negotiated, custom tailored private carriage contracts.

Respectfully submitted,

FIRST FINANCIAL MANAGEMENT CORPORATION

By: 

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March 30, 1992

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CERTIFICATE OF SERVICE

I, Joan T. Prouty, certify that true copies of the foregoing "Comments of First Financial Management Corporation" were hand served on this 30th day of March, 1992 to the individuals listed below:

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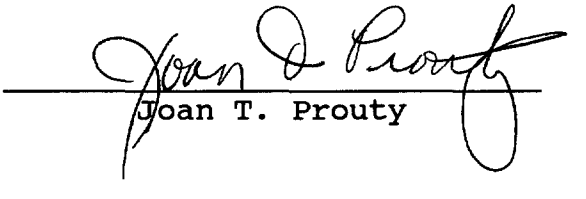

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